Unauthorized Appropriations; Legislation on Appropriation Bills

A. INTRODUCTORY MATTERS

§ 1. Generally; Scope

A House rule prohibits the inclusion in general appropriation bills of "unauthorized" appropriations, except for works in progress, and prohibits provisions "changing existing law," usually referred to as "legislation on an appropriation bill," except for provisions that retrench expenditures under certain prescribed conditions.⁽¹⁾

The statement of the rule under which most of the precedents in this chapter were decided is as follows: (2)

No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress. Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as being germane to the subject matter of the bill shall retrench expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill

On Jan. 3, 1981, the 98th Congress restructured and amended the clause as follows: paragraph (a) retained the prohibition against unauthorized appropriations in general appropriation bills and amendments thereto except in continuation of works in progress; paragraph (b) narrowed the "Holman Rule" exception from the prohibition against legislation to cover only retrenchments reducing amounts of money included in the bill as reported, and permitted legislative committees with proper jurisdiction to recommend such retrenchments to the Appro-

^{1.} Rule XXI clause 2, *House Rules and Manual* §834 (1985). The "retrenchment" provision is known as the Holman rule, and is discussed in §§4, 5, infra.

^{2.} See Rule XXI clause 2, *House Rules* and *Manual* § 834 (1973). This chapter discusses significant recent rulings through 1984. For earlier treatment, see 4 Hinds' Precedents §§ 3701–4018; 7 Cannon's Precedents §§ 1125–1570, 1579–1720.

priations Committee for discretionary inclusion in the reported bill; paragraph (c) retained the prohibition against amendments changing existing law but perlimitation amendments mitted during the reading of the bill by paragraph only if specifically authorized by existing law for the period of the limitation; and paragraph (d) provided a new procedure for consideration of retrenchment and other limitation amendments only when reading of a general appropriation bill has been completed and only if the Committee of the Whole does not adopt a motion to rise and report the bill back to the House.(3)

The broad requirement that appropriations be "authorized" by prior legislation is discussed in another chapter. (4) In practice, the concepts "unauthorized appropriations" and "legislation on general appropriation bills" have frequently been used almost interchangeably as grounds for objection in making points of order pursuant to Rule XXI clause 2. It can, of course, readily be seen that an appropriation sought to be

made without prior authorization has, in a sense, the effect of legislation, particularly in view of rulings of long standing (5) that a "proposition changing existing law" may be construed to include the enactment of a law where none exists. The two concepts are treated separately in this chapter, however. For example, it will be seen that the objection that an appropriation is "unauthorized" is frequently employed where the general purpose of the appropriation has been authorized, but the amount sought to be appropriated allegedly exceeds the amount authorized.(6)

Frequently, rulings on points of order will turn on whether a proposition is in fact one of legislation, or whether it is merely a permissible "limitation" on the funds sought to be appropriated. Such limitations may validly be imposed in certain circumstances, where the effect is not to directly change existing law. Thus, just as the House may decline to appropriate for a purpose authorized by law, it may by limitation prohibit the use of the money for part of the purpose while appropriating for the remainder of it.(7) The lan-

^{3.} See Rule XXI clause 2, *House Rules and Manual* § 834 (1983).

^{4.} See Ch. 25, supra, discussing general principles applicable to appropriation bills and the reporting and consideration thereof.

^{5.} See 4 Hinds' Precedents §§ 3812, 3813.

^{6.} See, for example, §21, infra.

^{7.} See 4 Hinds' Precedents § 3936; 7 Cannon's Precedents § 1595.

guage of the limitation may provide that no part of the appropriation under consideration shall be used for a certain designated purpose. (8)

Such limitations must not be legislative in character; for example, they must not give affirmative directions, impose new duties upon executive officers, or by their terms restrict executive discretion to such a degree as to constitute a change in policy rather than a matter of administrative detail. A separate division in this chapter (9) discusses those instances in which the Chair, usually in response to points of order based on Rule XXI clause 2, has held that the proposition in question was a permissible limitation on the use of funds.(10)

The rule against unauthorized appropriations and legislation on general appropriation bills is one of long standing. Its purpose has been to prevent delay of appropriation bills because of contention over propositions of legislation while at the same time to require prior consideration and enactment of authorizing legislation reported by legislative committees with legislative and oversight jurisdiction over the policies and programs which form the basis for expenditure of government funds.

It should be emphasized that the rule applies only to "general" appropriation bills. The broad question as to when a bill may be considered a "general" appropriation bill, and when not, is discussed in another chapter.(11)

Note: The rulings cited in this chapter are intended to illustrate the application of the rule requiring appropriations to be based on prior authorization. No attempt has been made to indicate whether measures similar to those ruled upon, if offered today, would in fact be authorized under present laws.

"General" Appropriation Bills

§ 1.1 Restrictions imposed by Rule XXI clause 2 apply only

^{8.} 4 Hinds' Precedents §§ 3917–3926; 7 Cannon's Precedents § 1580.

^{9.} See §§ 64–79, infra.

^{10.} A limitation may also be imposed on the total amount appropriated by a bill. See §80, infra. Pursuant to § 401(a) of the Congressional Budget Act of 1974 (Pub. L. No. 93–344), legislative bills authorizing contract borrowing spending authority must provide that such authority is available only to the extent or in such amounts provided in appropriations acts. Thus, a properly drafted limitation on new spending authority may be included in a general appropriation bill if specifically required by the act containing that contract or borrowing authority.

^{11.} See Ch. 25, supra.

to general appropriation bills.

On May 21, 1937,⁽¹²⁾ there was under consideration in the Committee of the Whole a joint resolution (H.J. Res. 361) providing for appropriations "to continue to provide relief and work relief on usepublic projects," including projects previously approved for the Works Progress Administration. The funds appropriated were to be used "in the discretion of and under the direction of the President." During consideration of the joint resolution, a point of order was raised against the following amendment. and proceedings ensued as indicated below:

Page 3, after line 18, insert the following: "The funds allocated hereunder to the Works Progress Administration shall be so apportioned and distributed over the 12 months of the fiscal year ending June 30, 1938, and shall be so administered during such fiscal year as

12. 81 Cong. Rec. 4936, 75th Cong. 1st Sess. See also 84 Cong. Rec. 7345, 7365, 7366, 76th Cong. 1st Sess., June 16, 1939 (proceedings relating to H.J. Res. 326, the work relief and public works appropriation bill and a point of order raised by Mr. Claude V. Parsons [Ill.]).

For further discussion of the distinction between "general" appropriation bills and those not falling within that category, see Ch. 25, supra.

to constitute the total amount that will be furnished during such fiscal year through such agency for relief purposes."...

MR. PARSONS: I make the point of order that the amendment is not in order because it is legislation on an appropriation bill.

THE CHAIRMAN: (13) The Chair is ready to rule. The bill in question is not a general appropriation bill, and therefore clause 2 of Rule XXI does not apply. The Chair overrules the point of order.

Continuing Appropriations

§ 1.2 Parliamentarian's Note: The rule against legislation in appropriation bills is limited to general appropriation bills; thus, a joint resolution continuing appropriations government for agencies pending enactment of the regular appropriation bills, which is not a "general appropriation bill" as it does not provide appropriations on an annual basis, is not subject to the prohibitions of Rule XXI clause 2 against legislative language.

On Sept. 21, 1967,(14) The following proceedings occurred in the House:

MR. [GEORGE H.] MAHON [of Texas]: Mr. Speaker, I ask unanimous consent

^{13.} John J. O'Connor (N.Y.).

^{14.} 113 CONG. REC. 26370, 90th Cong. 1st Sess.

that it may be in order on Wednesday, September 27, or any day thereafter, for the House to consider a joint resolution making continuing appropriations.

The Speaker: $^{(15)}$ Is there objection to the request of the gentleman from Texas?

MR. [FRANK T.] Bow [of Ohio]: Mr. Speaker, reserving the right to object, I wish to address a parliamentary inquiry to the Chair.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. Bow: Mr. Speaker, the parliamentary inquiry is this: Is a continuing resolution subject to amendment when it is brought onto the floor of the House, if the amendment is germane?

THE SPEAKER: The Chair will state that any germane amendment will be in order. It would have to be a germane amendment.

MR. Bow: I thank the Speaker, and I withdraw my reservation of object.

The Speaker: Is there objection to the request of the gentleman from Texas? . . .

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, further reserving the right to object, may I ask the gentleman from Texas if this is the second, third, fourth, or fifth continuing resolution?

Mr. Mahon: Mr. Speaker, this is the third continuing resolution to be considered by the House this year.

I would also say in this case, as in former cases, that the continuing resolution would be considered in the House under the 5-minute rule, and I assume any relevant amendment could be offered.

MR. GROSS: This would be considered in the House under the 5-minute rule, and any amendment that is germane could be offered?

MR. Mahon: We have considered them heretofore under the 5-minute rule and that would be my intention in this case. . . .

MR. GROSS: Mr. Speaker, in view of the fact that the gentleman says the 5minute rule will prevail and that any germane amendments will be in order to the continuing resolution, I withdraw my reservation of objection.

THE SPEAKER: Is there objection to the request of the gentleman from Texas [Mr. Mahon]?

There was no objection.(16)

Supplemental Appropriations

§ 1.3 A supplemental appropriation joint resolution containing additional funds for two agencies for the balance of the fiscal year was held not to be a "general" appropriation bill within the meaning of the rule prohibiting appropriations in general appropriation bills for unauthorized expenditures.

On Apr. 12, 1973,⁽¹⁷⁾ Mr. George H. Mahon, of Texas, called up for

^{15.} John W. McCormack (Mass.).

^{16.} Parliamentarian's Note: Had this been a general appropriation bill, it would have been called up as a privileged bill under Rule XI clause 22 (now clause 4), rather than by unanimous consent. See Ch. 25, supra, for further discussion of the privileged nature of general appropriation bills.

^{17. 119} CONG. REC. 12191, 93d Cong. 1st Sess. Permission for consideration of

consideration in the House as in Committee of the Whole a joint resolution (H.J. Res. 496) making supplemental appropriations for the Civil Aeronautics Board and the Veterans' Administration for fiscal year 1973.

Mr. Silvio O. Conte, of Massachusetts, raised a point of order against the appropriation for the Civil Aeronautics Board, and proceedings ensued as indicated below:

MR. CONTE: Mr. Speaker, I raise a point of order in regard to the payments to air carriers for an additional amount for "payments to air carriers" in the amount of \$26,800,000, to remain available until expended.

The point of order is that it exceeds the authority to fix rates as set by the Congress under section 406, 72 statute 763, as amended by 76 statute 145, 80 statute 942, and 49 U.S.C. 1376.

The law states:

The Board is empowered and directed, upon its own initiative or upon petition of the Postmaster General or an air carrier, (1) to fix and determine from time to time, after notice and hearing, the fair and reasonable rates of compensation for the transportation of mail by aircraft.

this bill was granted on Apr. 10, 1973. The bill was filed on Apr. 11, 1973, pursuant to a unanimous-consent agreement to permit filing after adjournment. No points of order against the bill were reserved, either at the time of filing or at the time permission was granted for consideration of the bill.

Later on, in section (b) of the same authority to fix rates, the rate may be determined under (3):

The need of each such air carrier (other than a supplemental air carrier) for compensation for the transportation of mail sufficient to insure the performance of such service, and, together with all other revenue of the air carrier

Therefore, Mr. Speaker, I raise the point of order that this appropriation exceeds the authorization as passed by the Congress and signed into law by the President. . . .

THE SPEAKER: (18) The Chair is ready to rule.

The pending House joint resolution is not a general appropriation bill. The point of order which the gentleman has made does not apply to this pending legislation.

The Chair, therefore, overrules the point of order.

Parliamentarian's Note: This bill, containing as it did appropriations for two agencies for the remainder of the fiscal year, would have qualified as a "general appropriation bill" under the precedents. However, the Committee on Appropriations filed the bill under the impression it was not a general bill, and since no points of order were reserved, none could have been pressed in Committee of the Whole.

Legislation in Motion to Recommit

§ 1.4 If any portion of a motion to recommit with instruc-

18. Carl Albert (Okla.).

tions constitutes legislation on an appropriation bill, the entire motion is out of order.

On Sept. 1, 1976,(19) During consideration in the House of the legislative branch appropriation bill (H.R. 14238), a point of order was raised and sustained against a motion to recommit as indicated below:

The Clerk read as follows:

Mr. [R. Lawrence] Coughlin [of Pennsylvania] moves to recommit the bill, H.R. 14238, to the Committee on Appropriations, with instructions to that Committee to report the bill back to the House forthwith, with the following amendments: On page 7, after line 24, insert the following new section: . .

'Expenditure of any appropriation contained in this Act, disbursed on behalf of any Member or Committee of the House of Representatives, shall be limited to those funds paid against a voucher, signed and approved by a Member of the House of Representatives, stating under penalty of perjury, that the voucher is for official expenses as authorized by law: Provided further, That any Member of the House of Representatives who willfully makes and subscribes to any such voucher which contains a written declaration that it is made under the penalties of perjury and which he does not believe at the time to be true and correct in every material matter, shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$2,000 or imprisoned for not more than five years, or both.". . .

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Speaker, I make a point of order against the motion to recommit. . . .

Mr. Speaker, the motion to recommit falls in violation of the rules against legislation in an appropriation bill. Under the rules of the House, Mr. Speaker, a motion to recommit is subject to the same germaneness tests as any other amendment to a piece of legislation.

Mr. Speaker, I therefore make a point of order against the motion on the grounds that it constitutes an attempt to legislate in an appropriation bill. . . .

On page 3, there is a requirement that any Member who makes a willful statement subscribing any voucher shall be guilty of the penalties of perjury.

This adds essentially a new amendment to the Criminal Code, which most properly can be found in title 18 of the United States Code, and it imposes further, Mr. Speaker, a requirement that such act shall constitute a felony which will be punishable by not more than \$2,000 or subject to imprisonment of not more than 5 years. . . .

Mr. Coughlin Mr. Speaker, I rise in opposition to the point of order that has been raised. . . .

Mr. Speaker, with respect to the point of order addressed to the execution of vouchers under penalties of perjury, that does not impose a significant additional duty in compliance with the facts that those vouchers must already be executed by the Members certifying that they are for official expenses. This motion says they would be executed under penalty of perjury.

^{19.} 122 CONG. REC. 28883, 28884, 94th Cong. 2d Sess. The Clerk read as follows:

The additional amendment would concede the point of order as it applies to the second paragraph on page 3 of the motion, but I think it would be beneficial to the Members to have that explanation there; and I would hope that the point of order would be withdrawn as to that point. . . .

THE SPEAKER: (20) The Chair is prepared to rule. The Chair is going to sustain the point of order. The gentleman from Pennsylvania has conceded one portion of the point of order, and with that the entire motion to recommit is subject to a point of order.

Procedure for Offering Limitations

§ 1.5 When a general appropriation bill has been read, or considered as read, for amendment in its entirety, the Chair (after entertaining points of order) first entertains amendments which are not prohibited by Rule XXI clause 2(c), and then recognizes for amendments proposing limitations not contained or authorized in existing law pursuant to Rule XXI clause 2(d), subject to the preferential motion that the **Committee of the Whole rise** and report the bill to the House with such amendments as may have been agreed to.

On Oct. 27, 1983,(1) The Committee of the Whole had under consideration the Treasury Department and Postal Service appropriation bill (H.R. 4139), when the following proceedings occurred:

MR. [CHRISTOPHER H.] SMITH of New Jersey: Mr. Chairman, would it be in order at this time to offer a change in the language that would not be considered under the House rules to be legislating on an appropriations bill?

THE CHAIRMAN: (2) The Chair will first entertain any amendment to the bill which is not prohibited by clause 2(c), rule XXI, and will then entertain amendments proposing limitations pursuant to clause 2(d), rule XXI.

Mr. Smith of New Jersey: Mr. Chairman. I offer an amendment.

MR. [BRUCE A.] MORRISON of Connecticut: Mr. Chairman, I reserve a point of order against the amendment.

THE CHAIRMAN: The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. Smith of New Jersey: On page 49, immediately after line 2, add the following new section:

"Sec. 618. No funds appropriated by this Act shall be available to pay for an abortion, or the administrative expenses in connection with any health plan under the Federal employees health benefit program which provides any benefits or coverages for abortions, under such negotiated plans after the last day of the contracts currently in force."

^{20.} Carl Albert (Okla.).

^{1.} 129 CONG. REC. —, 98th Cong. 1st Sess.

^{2.} Philip R. Sharp (Ind.).

MR. MORRISON of Connecticut: Mr. Chairman, I would like to be heard on my point of order.

THE CHAIRMAN: The Chair will hear the gentleman's point of order.

MR. MORRISON of Connecticut: Mr. Chairman, my point of order is that this amendment constitutes a limitation on an appropriation and cannot be considered by the House prior to the consideration of a motion by the Committee to rise.

THE CHAIRMAN: The Chair must indicate to the gentleman that no such preferential motion has yet been made.

The gentleman is correct that a motion that the Committee rise and report the bill to the House with such amendments as may have been adopted takes precedence over an amendment proposing a limitation.

Motion to Rise and Report With Recommendation For Recommittal

§ 1.6 Pursuant to Rule XXI clause 2, as adopted in the 98th Congress, a motion that the Committee of the Whole rise and report a general appropriation bill to the House with such amendments as may have been adopted takes precedence over an amendment proposing a limitation not contained or authorized in existing law, after the bill has been read for amendment in its entirety; accordingly a motion that the Committee rise and report the bill to the House with the recommendation that it be recommitted, with instructions to the committee to report the bill back to the House (whether or not forthwith) with an amendment proposing such a limitation, does not take precedence of the motion to rise and report the bill to the House with such amendments as may have been adopted.

The following motions were made on Sept. 19, 1983, (3) during consideration of H.R. 3222 (Departments of Commerce, State, Justice, and the Judiciary appropriations for fiscal 1984):

The Clerk read as follows:

Mr. [Neal] Smith of Iowa moves that the Committee do now rise and report the bill to the House with sundry amendments with the recommendation that the amendments be agreed to and that the bill as amended do pass.

MR. [ROBERT S.] WALKER [of Pennsylvania]: Mr. Chairman, I have a preferential motion at the desk.

THE CHAIRMAN: (4) The Clerk will report the preferential motion.

The Clerk read as follows:

Mr. Walker moves that the Committee do now rise and report the bill to the House with the recommendation that the bill, as

^{3.} 129 CONG. REC. —, 98th Cong. 1st Sess.

^{4.} George E. Brown, Jr. (Calif.).

amended, be recommitted to the Committee on Appropriations with instructions that the committee report the bill, as amended, back to the House with the following amendment:

At the end of title II, add the following new section:

"None of the funds appropriated under this title shall be used to prevent or in any way prohibit the implementation of programs of voluntary school prayer and meditation in the public schools."

Mr. Smith made a point of order against the preferential motion on the ground that the motion violated clause 2 of Rule XXI.

The effect of the Walker motion would have been to reverse the precedence contemplated by Rule XXI clause 2(d) by allowing a vote on a limitation amendment before the motion to rise and report. Accordingly, the Chair indicated that, although a motion that the Committee of the Whole rise and report a bill to the House with the recommendation that the bill be recommitted is preferential to a motion to rise and report where a bill has been read in full under the general five-minute rule of the House. (5) instructions in a recommittal motion may not propose an amendment which would not be in order. The Chair applied the principle that it is not in order to do indirectly (by a motion to recommit with instructions to report a

particular amendment back to the House) that which may not be done directly under the rules of the House by way of amendment.

On appeal, the Chair's decision was sustained by a voice vote.

Legislative Language in Prior Appropriation Acts

§ 1.7 The fact that legislative language may have been included in appropriation acts in prior years applicable to funds in those laws does not permit the inclusion in a general appropriation bill of similar language requiring officials to make determinations not otherwise required by law for the fiscal year in question.

The ruling of the Chair on Sept. 22, 1983,⁽⁶⁾ as that a provision in a general appropriation bill prohibiting the use of funds therein to perform abortions except where the life of the mother would be endangered if the fetus were carried to term, and providing that the several states shall remain free not to fund abortions to the extent they deem appropriate, is legislation requiring federal officials to make determinations and judgments not required by law, not-

^{5. 8} Cannon's Precedents Sec. 2329.

^{6.} 129 CONG. REC. —, 98th Cong. 1st Sess.

withstanding the inclusion in prior year appropriation bills of similar legislation applicable to funds in prior years. The proceedings are discussed in § 52.44, infra.

§ 2. Points of Order; Timeliness

As all bills making or authorizing appropriations require consideration in Committee of the Whole, it follows that the enforcement of Rule XXI clause 2 must ordinarily occur during consideration in Committee of the Whole, where the Chair, on the raising of a point of order, may rule out any portion of the bill in conflict with the rule. No report of parts of the bill thus ruled out is made to the House. It is the practice, therefore, for some Member to reserve points of order when a general appropriation bill is referred to Committee of the Whole, in order that portions in violation of the rule may be eliminated in the Committee. On one occasion where points of order were not reserved against an appropriation when it was reported to the House and referred to the Committee of the Whole, points of order in the Committee of the Whole against a proposition in violation of this clause were overruled, on the ground that the Chairman of the Committee of the Whole lacked authority to pass upon the question. (7)

General appropriation bills are read "scientifically" only by paragraph headings and appropriation amounts, and points of order against a paragraph must be made before an amendment is offered thereto or before the Clerk reads the next paragraph heading and amount. Where the bill is considered as having been read and open to amendment by unanimous consent, points of order against provisions in the bill must be made before amendments are offered, and cannot be reserved pending subsequent action amendments.(8)

Reservation of Points of Order

§ 2.1 Since points of order had not been reserved on an appropriation bill when it was reported to the House and referred to the Committee of the Whole, points of order against a proposition in violation of Rule XXI clause 2 overruled were on ground that the Chairman lacked authority to pass upon the question.

^{7.} See § 2.1, infra.

^{8.} See the discussion in *House Rules* and *Manual* § 835 (1983).